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No. 05-1508

In The Supreme Court of the United States

ZUNI PUBLIC SCHOOL DISTRICT NO. 89
AND GALLUP-McKINLEY COUNTY
PUBLIC SCHOOL DISTRICT NO. 1,

Petitioners,

v.

UNITED STATES DEPARTMENT
OF EDUCATION, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

MOTION FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE AND BRIEF OF AMICI CURIAE PUBLIC SCHOOL DISTRICTS IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE

The 54 New Mexico school districts joining in the submission of this brief[1] ("Amici Districts") move for leave to participate as amici curiae. The Amici Districts represent the vast majority of New Mexico's public school student population. In all but 11 of the 89 districts, a decision discarding the 30-year-old administrative practice at issue would decrease the per-student education funding. Petitioner's challenge to equalization, if successful, would require the State of New Mexico to seek another source for approximately $350 million in revenue to achieve the same statewide level of funding New Mexico achieved for fiscal years 1999-2000 through 2005-2006.[2]

Principally, Amici Districts seek to contribute to the Court's understanding of the effect a reversal of the Secretary's certification of New Mexico's plan as "equalized" will have on districts that do not receive Impact Aid. New Mexico's education equalization program has a long and unique history, including a significant reliance on the Secretary's longstanding methodology. That reliance affects the outcome of the dispute over statutory meaning.

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[1] Letters of consent from counsel for the Respondents are on file with the Clerk. Counsel for Petitioners were unable to state their client's consent or opposition to participation by the Amici Districts because of time constraints. None of the counsel for the parties authored this brief in whole or in part, and no one other than the Amici Districts made a monetary contribution to the preparation or submission of the brief. The Amici Districts and their respective enrollments are listed in Appendix A. App. at 1-2.

[2] Petitioners approximate the annual Impact Aid Funding at issue at $50 million, *Pet. Br.* at 4. Petitioners have challenged the Secretary's certification of equalization for each fiscal year since 1999-2000.

New Mexico's equalization program appears to have been certified by the Secretary, using the disparity methodology at issue in this case, in each fiscal year since 1976. The Amici Districts have cooperated with the State in support of its equalization efforts, with many districts sacrificing significant local revenues so that students attending less fortunate districts may be afforded better, more equal educational opportunities. These efforts accord with Congress's purposes in encouraging equalization through the enactment of 20 U.S.C. § 7709 and its amendments.

As a matter of law and policy, Petitioners are incorrect in dismissing the practical impact of their position upon other districts and the State's equalization program as a whole.[3] New Mexico's commitment to equalized funding of education predates any action by Congress in this field. The Court should not be misled into reducing the State's highly complex, technical, and long-term effort at equalizing educational opportunities for New Mexico's students to a hyper-formalistic reading of a single sentence in the Impact Aid statute. To do so belittles the willing participation of the Amici Districts in the State's equalization efforts, discounts the sacrifices the districts with substantial local resources have made for decades, and disregards the profound needs of the less fortunate districts that do not benefit from Impact Aid.

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[3] *See Pet. Br.* at 47 ("Respondents have also argued that allowing the intended beneficiaries of the Impact Aid to receive [it] without penalty will distort the New Mexico equalization funding formula at the expense of the other school districts. This is not a legal argument. It is just another plea that this Court should condone the Secretary's substitution of his judgment for the Congress's judgment on policy issues.").

SUMMARY OF ARGUMENT

Petitioners are mistaken in arguing that the effect of their interpretation of the Impact Aid statute on other districts is an immaterial "plea," with no legal significance. *Pet. Br.* at 47. First, despite New Mexico's uniquely challenging demographics, the history of New Mexico's education program demonstrates an impressive and long-term commitment to equalization in its funding of public education, which comports with the purposes of the Impact Aid program. New Mexico's educational funding program has evolved partially in reliance on the long-standing availability of the credits for Impact Aid challenged by Petitioners in this case. Second, reversal of the Secretary's certification determinations will have profoundly adverse and unfair effects on the districts that do not receive Impact Aid. Third, legislative history confirms that Congress respected and protected the reliance of fund recipients. Fourth, this Court's precedents addressing purported conflicts between statutory language and administrative practice confirm that reliance interests created by longstanding agency interpretations weigh significantly in favor of sustaining the administrative interpretation. Finally, Petitioners' miscalculation of the significance of the effect of their position on the State and other districts distorts Petitioners' notions of available remedies.

ARGUMENT

I. THE HISTORY OF NEW MEXICO'S COMMITMENT TO EQUALIZING EDUCATION SPENDING IN A CHALLENGING DEMOGRAPHIC SETTING DEMONSTRATES RELIANCE ON THE AVAILABILITY OF IMPACT AID CREDITS DETERMINED UNDER THE METHODOLOGY AT ISSUE.

A. New Mexico Has Successfully Confronted Difficult Demographic Challenges To Equalization.

New Mexico faces daunting challenges in equalizing its education funding. New Mexico Public Education Department statistics indicate that, among the states, New Mexico ranks 48th in per capita personal income and 40th in average salaries of public school teachers. *See "New Mexico's Ranking Among the States"* (available at http://www.ped.state.nm.us/div/fin/school.budget/nm.stat.05/index.html) (attached as Appendix B), App. at 3-4.[4] Despite its

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[4] The Court may take judicial notice of statistics compiled by government agencies and made available to the public through the Internet. *See* FED. R. EVID. 201(b)(2) (permitting a court to take judicial notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned"). Rule 201 authorizes judicial notice "at any stage of the proceedings." FED. R. EVID. 201(f). Thus, the rules of evidence accommodate judicial notice on appeal of the kinds of demographic and statistical data available through official agency websites presented here. *See, e.g., United States v. Esquivel*, 88 F.3d 722, 727 (9th Cir. 1996) (taking judicial notice on appeal of census data showing the number of Hispanics available for jury duty); *United States ex rel. Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968, 972 (W.D. Mich. 2003) (noting that public records and government documents available on the Internet are not subject to reasonable dispute, for purposes of Rule 201); *Cali v. East Coast Aviation Servs., Ltd.*, 178 F. Supp. 2d 276, 287 n.6 (E.D.N.Y. 2001)

(Continued on following page)

low income and teacher salary rankings, New Mexico ranks 26th in public school revenue per student (for fall enrollment 2003-2004) and 26th in expenditures per student in public elementary and secondary schools for 2004-2005. *Id.* More than 23% of the public school-age students in New Mexico live in poverty. *See "Percent of Population Ages 4 to 17 Living in Poverty By District"* (available at http://www.ped.state.nm.us/div/ais/data/fs/03/05.06.poverty.dist.pdf) (attached as Appendix C), App. at 5. Among New Mexico's school districts, the percentages of school-age children living in poverty range from 2.53% in the Los Alamos school district to 50.34% in the Cuba school district. *Id.* The percentage of school-age children living in poverty in 49 of the 89 school districts is 25% or higher; 23 districts have a poverty rate of over 30% and eight have a poverty rate in excess of 40%. *Id.*

New Mexico school districts vary greatly in enrollment. For the 2005-2006 school year, statewide enrollment was 328,111. *See "Total Student Enrollment by District, School Year 2005-2006"* (available at http://www.ped.state.nm.us/div/ais/data/fs/05/05.06.enroll.dist.pdf (attached as Appendix D), App. at 6. The Albuquerque school district, by far the largest, had 94,566 students. *Id.* The next largest school district, Las Cruces, had approximately one-fourth the enrollment of the Albuquerque district. *Id.* The Mosquero district, the smallest, had 50. *Id.* Five districts (Mosquero, Roy, Corona, Maxwell and Vaughn) had fewer than 100 students; 44 other districts had fewer than 1,000. *Id.* at 6, 7.

(taking judicial notice of online database pages from state governmental agencies).

The ethnic composition of New Mexico's school population also varies considerably from district to district. Of the enrollment population statewide, 31.1% of the students are "Anglo," 54% are "Hispanic," 11.1% are "Native American," 2.5% are "Black" and 1.3% are "Asian." *See* "*Percent of Student Enrollment Ethnic Category by District, School Year 2005-2006*" (available at http://www.ped.state.nm.us/div/ais/data/fs/13/05.06.ethnic.pdf) (attached as Appendix E), App. at 8. The "Anglo" enrollment is more than 50% at 25 of the 89 districts and less than 20% at 26 districts. *Id.* The "Hispanic" enrollment is 50% or more at 43 of the 89 districts, including Albuquerque, and 20% or more at 80 of the districts. *Id.* At 15 districts, "Native American" students comprise 15% or more of the enrollment. *Id.*

Despite these particular challenges, the State and its school districts have developed a long term and successful partnership in their commitment to equalization. This commitment has resulted in the successful certification of the State's plan as "equalized" in each fiscal year since certification became available approximately 30 years ago.

B. The History Of New Mexico's Commitment To Equalization Evidences Its Reliance On The Longstanding Certification Approach.

New Mexico's historical commitment to statewide funding of public education and equalization predates federal initiatives by many decades. Long before Congress enacted the federal Impact Aid program in 1950, or amended the Impact Aid program in 1974 to allow equalized states to credit federal fund against state aid, New Mexico's constitution established the groundwork for school funding equalization, independent of local property tax revenues. It created a current school fund and required annual distributions to

the school districts based upon their proportional shares of the total number of school-age children, with additional distributions made to school districts that remained financially unable to maintain public schools after imposing the maximum local property taxes allowed by law. N.M. Const. art. XII, § 4 (partially repealed Nov. 2, 1971).

In the 1930s, New Mexico took another step in the direction of equalization. It instituted an equalized system of school financing, under which the state distributed to each county the difference between its state-approved budget and the property taxes the county was capable of generating. *See* 1935 N.M. Laws, ch. 66 at § 11; *see also* 1939 N.M. Laws, ch. 209, §§ 6-10. In the 1940s, the legislature revised the system to depend primarily upon the weighted average daily attendance in the various counties, without taking into consideration local property tax revenues. *See, e.g.,* 1941 Laws, ch. 125. Counties that were unable to meet their budgets based upon their own maximum efforts at taxation were eligible for special grants in aid. *See, e.g.*, 1949 N.M. Laws, ch. 126; 1951 N.M. Laws, ch. 85. Variations of this format remained in effect for two decades. *See, e.g.*, 1962 N.M. Laws, ch. 8.

Another phase in the evolution toward an equalized system of education funding occurred in 1963, when the New Mexico legislature addressed persistent inequities in the quality of education around the state by incorporating into the funding mechanism the concept of a minimum program of education for all schools. *See* 1963 N.M. Laws, ch. 310. In addition to weighted per-capita basic support distributions, school districts received minimum support payments if the district's total revenues, including a percentage of all local and federal revenues, were inadequate to meet the minimum program standard. *See id.* at § 10.

In 1968, however, Congress amended the Impact Aid statute to prohibit payments to local school districts in states that took such payments into consideration in determining state aid. *See* Vocational Education Amendments of 1968, Pub. L. No. 90-576, § 305, 82 Stat. 1064 (certified as amended at 20 U.S.C. § 7709(d)); *cf.* Educational and Secondary Education Amendments of 1966, Pub. L. No. 89-750, § 203, 80 Stat. 1191 (reducing Impact Aid payments in proportion to state per-pupil expenditure reductions); *compare id.* with Law of Sept. 30, 1950, § 5, Pub. L. No. 81-874. The New Mexico legislature reacted by replacing minimum support payments with discretionary supplemental distributions based more vaguely upon financial need and local effort. *See* 1969 N.M. Laws, ch. 180, §§ 12, 22. It concurrently appealed to Congress to amend the federal law again. The New Mexico legislature wanted Congress to allow consideration of Impact Aid payments as local resources, to end the "forced frivolous use of state funds for non-essential programs in certain districts," to the detriment of needed financing for a minimal educational program in other districts. 1969 N.M. Laws, House Memorial 24. Congress did so in 1974 for states whose systems of aid were designed to "equalize expenditures" among the local school districts in the state. *See* Educational Amendments of 1974, § 304, Pub. L. No. 93-380, 88 Stat. 484 (formerly codified at 20 U.S.C. § 240(d) (repealed)).

In early 1974, the New Mexico legislature adopted the equalized system of state financing of public education that substantially remains in effect today. For each school district, the State calculates total program costs based on "program units" reflecting average daily membership at various levels of education, and other special conditions.

Compare NMSA 1978, § 22-8-18 (2005) *with* 1974 N.M. Laws, ch. 8, § 8; *Compare* NMSA 1978, § 22-8-25 (2005), *with* 1974 N.M. Laws, ch. 8, § 16. The State guarantees direct payment of each school district's program costs, less a percentage of its local and federal revenues. *Compare* NMSA 1978, § 22-8-18(F) (2005), *with* 1974 N.M. Laws, ch. 8, § 16.

The availability of Impact Aid credits has been an important feature in the evolution of New Mexico's education program toward equalization. In each fiscal year since state credit for Impact Aid payments became available, it appears that New Mexico's program has been certified as "equalized" using the disparity methodology challenged in this case. This history confirms that New Mexico has relied upon Impact Aid credits as an essential component of New Mexico's longstanding policy of collectivizing state education revenue and Congress's intent to make Impact Aid credits available to states like New Mexico.

II. THE CONSEQUENCES OF DISREGARDING THE EXPECTATIONS OF AMICI DISTRICTS AND THE STATE WOULD BE SEVERE AND INEQUITABLE.

The Amici Districts have a significant stake in the outcome of this case because loss of certification would either necessitate a large appropriation from the New Mexico legislature to offset the loss of the Impact Aid credit, or result in the loss of significant operational revenue for a majority of New Mexico's school districts.

Analysis of two recent New Mexico legislative proposals, both rejected, confirm the nature and magnitude of the adverse effect on most school districts (and certainly

the majority of the students in New Mexico's public schools) resulting from a loss of certification. In 2003, the state representative from District 69 (which includes McKinley, Cibola, and San Juan counties) proposed HB 115, entitled "School Funding Formula." *See "New Mexico State Department of Education 2003 Agency Bill Analysis"* (available at http://www.ped.state.nm.us/bill.analysis/2003/hb/hb115.pdf) (attached as Appendix F[5]), App. at 9-14. The bill would have amended NMSA, 1978 § 22-8-25 to reduce gradually the percentage of Impact Aid receipts the state takes credit for in calculating equalization. *Id.* at 10-11. The bill proposed reducing the percentage from 75% to 15% over a period of four years. *Id.*

The bill analysis pointed out that, if enacted, the bill would result in New Mexico no longer qualifying under federal law for Impact Aid credits because New Mexico would no longer meet the disparity test required by federal law. *Id.* at 11-12. The bill analysis identified the fiscal impact of the proposed bill as follows:

> Passage of HB 115 would require the 2004 Legislature to appropriate a projected additional $48,845,000 of general revenue to the [State Education Guarantee] to make up for the loss in Impact Aid credits and thereby maintain current unit rate [expenditures per student]. Otherwise the unit value for all school districts would have to be reduced proportionally to make up the loss to the SEG.-

Id. at 12.

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[5] Printing difficulties prevented the inclusion of tables which accompanied the bill analysis. All of the accompanying tables are available at the Public Education Department's web site, as cited.

The analysis also concluded that, without additional funding, the proposed bill would cause "a majority of the school districts to experience a loss of operational revenue. The affected school districts would have fewer resources to meet their performance measure targets." *Id.*

The analysis included a chart (Table 2) displaying the effect on district operational funds resulting from the loss of Impact Aid credits. The table showed that, of the 89 districts, 76 would suffer annual operational losses, ranging from over $12 million in Albuquerque to $18,385 for Mosquero, based on 2000-2001 program costs. *Id.* at Table 2.

In 2003, the New Mexico legislature also considered HB 637, a bill to "Allow School Districts to Keep Federal Money," which proposed amending NMSA 1978, § 22-8-25 to eliminate the state's ability to take Impact Aid credits. *See "New Mexico Department of Education 2003 Agency Bill Analysis"* (available at http://www.ped.state.nm.us/bill.analysis/2003/hb/hb637.pdf) (attached as Appendix G), App. at 15-20. Analysis of HB 637 also identifies the loss of impact aid credits as harmful to most of the state's school districts. ("Unless the legislature appropriates an additional amount equal to the federal revenues for which credit is taken, most school districts will experience a corresponding decrease in [State Education Guarantee] for operational expenditures."). *Id.* at 17.

The loss of Impact Aid credits would result in anomalous, unwanted inequities. For example, current enrollment in the Gadsden school district is close to enrollment in Petitioner Gallup school district. *See* App. at 8 (Gadsden total enrollment = 14,245; Gallup total enrollment = 13,000). Gadsden's enrollment is 94.6% Hispanic. *Id.* The

Gadsden and Gallup school districts are close in the percentages of school-age children in each living in poverty. *See* App. at 5 (Gadsden = 42.38%, Gallup = 37.11%). Table 2 of the 2003 bill analysis indicates, however, that the loss of Impact Aid credits would cause a $1.8 million loss in annual operating revenue in the Gadsden school district and a $15.4 million increase in annual operating revenue for Petitioner Gallup school district.

Similarly, the Hatch school district and Petitioner Zuni school district have roughly comparable current enrollment, *see* App. at 8 (Hatch total enrollment = 1,556; Zuni total enrollment = 1,585) and poverty rates for school-age children. *See* App. at 5 (Hatch = 45.34%, Zuni = 48.22%). The student population at the Hatch school district is 89.5% Hispanic. *See* App. at 8. Table 2 of the 2003 bill analysis indicates that, if Impact Aid credits were lost, the Zuni school district would experience a $3.7 million increase in annual operating funds, while the Hatch school district's annual operating funds would drop by $234,795.

The loss of Impact Aid credits would harm school funding at many other districts with high poverty rates in the school-age children population and with high percentages of minority students. The funding "losers" would include, for example, the Deming school district. Almost 40% of the school-age children there live in poverty and almost 80% of its students are Hispanic. App. at 5, 8. Another funding "loser" would be the Cobre Consolidated school district, which educates a school age population with over 35% living in poverty. App. at 8. More than 86% of its students are Hispanic. App. at 8. The Lordsburg school district, another funding "loser," also has a student

age population with over 35% living in poverty and more than 86% of its students are Hispanic. App. at 5, 8.

The funding "losers" would also include districts which teach student populations including a significant percentage of Native Americans. These include the Aztec (13.1%), Farmington (30.1%), Bernalillo (41.1%), Bloomfield (33.47%), Jemez Mountain (24.5%), Quemado (13.67%), and Ruidoso (17.1%) school districts. App. at 8. Petitioners are mistaken in urging the Court to overlook these consequences as an immaterial policy "plea." *Pet. Br.* at 47.

III. LEGISLATIVE HISTORY EVIDENCES CONGRESS'S CARE IN AVOIDING ABRUPT, UNEXPECTED CHANGES HARMFUL TO IMPACT AID RECIPIENTS.

Petitioners' suggestion that disregarding the expectations of adversely affected districts comports with Congressional policy also collides with relevant legislative history. 20 U.S.C. § 7709(b)(2), was enacted as part of the Improving America's Schools Act of 1994, P.L. 103-382 (the "1994 Act"), a comprehensive reauthorization of and amendment to over 40 federal education programs. Several provisions of the 1994 Act reflect Congress's concern with protecting school districts ("LEAs") and states against significant losses of expected federal revenues under the Impact Aid program.

For example, Congress extended Impact Aid relating to federal acquisition of real property to acquisitions occurring through fiscal year 1999. *See id.* at § 101, 108 Stat. 3749; *see also* 20 U.S.C. § 7702(a) (2006). LEAs eligible for Impact Aid payments relating to federally connected children under the former provisions of the law,

but not under the revised program, were guaranteed payment in fiscal year 1995 of at least 85% of their 1994 fiscal year amount. *See* Improving America's Schools Act of 1994, § 101, Pub. L. No. 103-382, 108 Stat. 3755. LEAs that remained eligible for such aid were similarly guaranteed a level of funding no less than 85% of the previous year's amount for a five-year period. *See id.* LEAs that had received payments relating to decreases in enrollment of federally connected children under provisions of the former act repealed in 1994 were entitled to a phase-out payment in fiscal year 1995 no less than 85% of their fiscal year 1994 payment. *See id.*; *see also* 20 U.S.C. § 238(e) (repealed).

In contrast, the portions of the 1994 Act dealing with state consideration of Impact Aid in providing state aid have no hold-harmless or phase-in protections.[6] *See* Improving America's Schools Act of 1994, § 101, Pub. L. No. 103-382, 108 Stat. 3764-67. Senator Jeff Bingaman of New Mexico made clear during Senate debates of the 1994 bill that "if my State could not take Impact Aid payments to districts into account in calculating amounts to be paid to local districts for education, the entire equalization system would be undermined and would undoubtedly have to be

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[6] Congress did provide for a phase-in of one aspect of the equalization criteria that plainly served to tighten the equalization standard. The 1994 Act provided that the allowable disparity for equalization certification would be reduced from 25% to 20% by 1998. Congress later withdrew this change prior to implementation. *See* Impact Aid Technical Amendments, § 10, Pub. L. No. 104-195, 110 Stat. 2384 (codified as amended at 20 U.S.C. § 7709(b)(2)(A)). Congress viewed this change as a "delay in the equalization mandate for schools in the States of Kansas and Alaska." *See* Congr. Rec., Sept. 4, 1996, p. H9939. New Mexico's ability to satisfy the lower equalization standard was apparently not in question.

reformulated. That process would be a long one[.]" 140 Congr. Rec. S. 1513 (daily ed. Aug. 2, 1994) (stmt. of Sen. Bingaman). The fact that Congress did not allow time for the states dependent upon the equalization credit to adjust their equalization programs suggests that Congress did not intend to alter the substance of the disparity standards as calculated using the Department of Education's regulations. *Cf.* H. Conf. Rep. No. 103-761, p. 639, *reprinted in* 1994 U.S.C.C.A.N. 2970 (three currently qualifying states).

Two years later, Congress enacted the Impact Aid Technical Amendments. *See* Impact Aid Technical Amendments, Pub. L. No. 104-195, 110 Stat. 2379-84 (Sept. 16, 1996) (codified as amended at 20 U.S.C. § 7709). As stated in the report of the House Committee on Economic and Educational Opportunities, the legislation made clarifying and technical amendments and addressed problems that had national application. H.R. Rep. No. 104-560, at 1 (1995), *reprinted in* 1996 U.S.C.C.A.N. 2894. Continuing its pattern of protecting Impact Aid recipients from sudden and unexpected changes in funding, Congress implemented a hold-harmless provision for Impact Aid relating to federal acquisition of real property, assuring LEAs of at least 85% of their prior fiscal year's payments for the years 1995 and 1996. This grace period gave school districts a longer period of time to adjust to "dramatic shifts in funds among eligible school districts." *See id.*; *see also* Impact Aid Technical Amendments, Pub. L. No. 104-195, 110 Stat. 2379. Significantly, the 1996 technical amendments act did not include any changes relating to the Department of Education's interpretation of the 95th and 5th percentile standard for state equalization plans. *See* Impact Aid Technical Amendments, Pub. L. No. 104-195, 110 Stat. 2379-84.

In 2000, Congress substantially modified the various Impact Aid funding programs, and Congress again extended protections against sudden losses of funds under the program. *See* Floyd D. Spense Nat'l Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398, 114 Stat. 1654, 1654A-386-87 (Oct. 30, 2000). For example, it extended the hold-harmless provision relating to Impact Aid for federally connected children into fiscal years 2001 and 2002, limited certain reductions in payments relating to federal acquisition of real property, and assured that a heavily impacted LEA would be eligible for basic support payments in the event of an unexpected ineligibility determination. *See id.* §§ 1803, 1804, 1806 at 1654A-373, 1654A-377. It also ameliorated the problem of eligible LEAs failing to timely apply for Impact Aid payments by giving notice and a 60-day grace period for late applications to fund recipients who had applied in the prior fiscal year. *See id.* at 1654A-382. The only change Congress made to the equalization provisions, however, was to repeal outdated references to the pre-1994 Impact Aid statute. *See id.* at § 1812, 114 Stat. 1654A-386. Similarly, in 2002, Congress made a minor, technical amendment to the equalization provisions of the Impact Aid law while changing the various aid programs substantively. It again extended additional guarantees of continuing payments to funding recipients that lost their eligibility and made special exceptions for specific LEAs that failed to timely file applications for aid. *See* No Child Left Behind Act of 2001, Pub. L. No. 107-110, §§ 801-805 115 Stat. 1425, 1947-56 (Jan. 8, 2002).

The evolution of the Impact Aid program from 1994 to the present demonstrates that Congress did not intend to change the equalization standards of Section 7709(b)(2) in

a way that would suddenly and unexpectedly cause the State of New Mexico to lose the ability to credit Impact Aid as part of its educational funding program. *See, e.g., Lorillard v. Pons,* 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative . . . interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change"); *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 535 (1982) ("Where an agency's statutory construction has been fully brought to the attention of the public and the Congress, and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned." (internal quotation marks omitted)). Congress repeatedly and consistently protected funding recipients from the catastrophic consequences of a sudden loss of Impact Aid funds. Nothing in the development of this legislative policy indicates that Congress intended to treat qualifying LEAs and states differently in terms of protecting funding recipients from abrupt changes in Impact Aid criteria. Given the care Congress took to safeguard against these consequences when it did make a substantive change in the funding criteria, it is highly unlikely that it intended to create the problem New Mexico will face if its certification is invalidated – the need to suddenly reallocate tens of millions of dollars of state aid.

IV. THE RELIANCE INTERESTS OF AMICI DISTRICTS AND THE STATE WEIGH SIGNIFICANTLY IN FAVOR OF UPHOLDING THE SECRETARY'S LONGSTANDING ADMINISTRATIVE PRACTICE.

Contrary to Petitioners' assertion, *Pet. Br.* at 47, this Court has repeatedly identified the reliance arising from an established administrative practice as a factor weighing significantly against disturbing an agency interpretation. Disregarding the State's (and in turn the Amici Districts') reliance interest under these circumstances would be inappropriate and unprecedented. Several of this Court's decisions illustrate this point. In *Zenith Radio Corp. v. United States,* 437 U.S. 443 (1978), Congress had reenacted the Tariff Act several times without changing the administrative interpretation in dispute. Trading nations and private companies had built significant expectations upon the agency's interpretation. The Court concluded that "[i]n light of these substantial reliance interests, the longstanding administrative construction of the statute should not be disturbed except for cogent reasons." *Id.* at 457-58 (quotation marks omitted).

In *Udall v. Tallman,* 380 U.S. 1 (1965), this Court considered the Secretary of the Interior's interpretation of an executive order and extensive oil and gas development undertaken in reliance on the Secretary's interpretation. *Id.* at 1, 16, 17. The *Udall* opinion explained that:

> It may be argued that while these facts and rulings prove a usage they do not establish its validity. But government is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long-continued action of the Executive Department –

> on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle but the basis of a wise and quieting rule that in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself – even when the validity of the practice is the subject of investigation.

Id. at 17 (quoting *United States v. Midwest Oil Co.*, 236 U.S. 459, 472-73 (1915)).

Other precedents support the "wise and quieting rule" of respecting the expectations arising from longstanding administrative interpretations. *See, e.g., E.I. Du Pont De Nemours v. Train*, 430 U.S. 112, 134-35 (1977) (pointing out that reliance by the states and other affected parties upon the Environmental Protection Agency's interpretation of amendments to the Federal Water Pollution Control Act was among the considerations supporting the agency's interpretation); *Train v. Natural Res. Def. Council,* 421 U.S. 60, 87 (1975) (same); *United States v. Chicago N. Shore & Milwaukee R.R. Co.*, 288 U.S. 1, 14 (1933) (noting that the railroad company and its officers had acted in reliance on the agency's ten-year old, uniform construction of an Interstate Commerce Act provision requiring the agency's authorization to issue securities, and stating that "[a]t this late day, the courts ought not uphold an application of the law contradictory of this settled administrative interpretation."). These principles retain their force in the "*Chevron* era." *See, e.g., Delaware River Stevedores v. DiFidelto,* 440 F.3d 615, 623-24 (3rd Cir. 2006) (Fisher, J., concurring) (stating that the "central insight" of *Midwest Oil,* that weight must be given to the administrative usage itself in the search for statutory

meaning, is "very much at home in the *Chevron* era"); *United States v. Parish of St. Bernard,* 756 F.2d 1116, 1126 (3rd Cir. 1985) (stating that "[w]e would be disputing with the sophists if we doubted for a moment" the presumption, arising from expectations connected with any long continued action of an executive agency, that administrative usage must be given weight in determining the meaning of the statute, as set out in *Tallman* and *Midwest Oil*).

Other features of modern administrative law foster stability and protect reliance on agency interpretations, and this Court presumes that Congress understands these mechanisms. For example, in *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 107 (1991), this Court recognized that it has "long favored application" of common law preclusion principles to final determinations of administrative bodies. Furthermore, the Court acknowledged Congress "is understood to legislate against a background of common-law adjudicatory principles" including those aimed at achieving stability and repose in administrative proceedings. *Id.* at 108; *see also Restatement (2d) of Judgments* § 83 (1982) at 266-67 (describing rule of *res judicata* applicable to administrative adjudications); cmt.b at 268 ("[T]he social importance of stability in the results of [administrative] decisions corresponds to the importance of stability in judicial judgments.").

While no formal rules of administrative *stare decisis* exist, a change in course requires the agency to provide a reasoned analysis. *See, e.g., Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 41-42 (1983); *Gas Trans. Northwest Corp. v. FERC,* 363 F.3d 500, 504 (D.C. Cir. 2004) ("Divergence from agency precedent demands an explanation.") (quoting *Hall v. McLaughlin*, 864 F.2d 868, 872 (D.C. Cir. 1989)). In

Motor Vehicle Mfrs. Ass'n, this Court explained that an agency changing direction by rescinding a rule must explain the change because:

> A settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to.

463 U.S. at 42 (quoting *Atchison, Topeka Santa Fe Ry. v. Wichita Bd. of Trade*, 412 U.S. 800, 807-08 (1973)).

The mechanisms in administrative law which protect reliance on administrative stability are, like *stare decisis*, reflections of a broader principle in the law disfavoring the disturbance of expectations. *See, e.g., Payne v. Tennessee,* 501 U.S. 808, 834-35 (1991) (Scalia, J., concurring) (noting that *stare decisis* is the application to judicial precedents of the "more general principle that the settled practices and expectations of a democratic society should generally not be disturbed by the courts."). Petitioners are thus mistaken in attempting to brush aside the expectations of affected entities, like Amici Districts, adversely affected by a disturbance of the settled expectations connected with the equalization methodology in dispute. *See, e.g., Randall v. Sorrell,* ___ U.S. ___, 126 S.Ct. 2479, 2500-501 (2006) (Alito, J., concurring) (concluding that the petitioners' failure to address *stare decisis* warranted rejection of arguments to overrule *Buckley v. Valeo*, 424 U.S. 1 (1976)).

V. THE COURT SHOULD GRANT NO RETROSPECTIVE RELIEF.

The Amici Districts urge the Court to adopt Respondents' position and uphold the Secretary's certification of New Mexico's program as equalized. If the Court finds the Secretary's certification of New Mexico's equalization plan invalid, Amici Districts request that the Court limit its decision to prospective applications only. Equity and this Court's precedents foreclose prospective relief.

Petitioners only vaguely reveal their objective in this litigation: "Petitioners have shown they were entitled to *retain* their Impact Aid funds for fiscal year 2000, and *for all intervening years* for which New Mexico was not equalized under the statutory formula."[7] *Pet. Br.* at 48. (emphasis added). Implicit in this objective is an expectation that New Mexico should reimburse the State aid that Impact Aid recipients would have otherwise received. *See id.* at 4 ("New Mexico's federally impacted districts are entitled to retain their additional share of approximately $50,000,000 per annum of Impact Aid funds without suffering offsetting reductions in their state provided operational funding.") For the following reasons, such a retroactive remedy would be inappropriate and unprecedented.

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[7] This statement is misleading, in that Petitioners *have retained* all of their Impact Aid funds. Under the certification process, New Mexico has been permitted to reduce *State aid* to Petitioners by 75% of the Impact Aid received. *See* 20 U.S.C. § 7709(1); NMSA 1978, § 22-8-25. New Mexico takes a partial credit for the Impact Aid, rather than the actual funds, as Petitioners suggest.

A. Equity Requires A Prospective Remedy.

In *Brown v. Board of Educ. of Topeka*, 349 U.S. 294 (1955), this Court recognized the importance of equitable principles in fashioning appropriate remedies. "Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs." *Id.* at 300. Because of the predominant role states and localities play in education and the need for practical flexibility, equity is of particular importance when the Court's decision will significantly affect a state's public education system. *See Milliken v. Bradley*, 418 U.S. 717, 741-42 (1974); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 49-50 (1973). In sum:

> No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. . . . [L]ocal control over the educational process affords citizens an opportunity to participate in decisionmaking, permits the structuring of school programs to fit local needs, and encourages experimentation, innovation, and a healthy competition for educational excellence.

Milliken, 418 U.S. at 741-42 (quotation marks omitted). The Court's decision and implementation of a remedy in this case will have a far-reaching impact on the State and local control of the education system in New Mexico. As such, an equitable remedy is warranted.

Though this case is not as far reaching as *Brown*, a reversal of the Secretary of Education's certification

decision and a retroactive application will have a profound impact on New Mexico, its funding of public education, and the students who attend non-Impact Aid schools. Petitioners fail to disclose explicitly that their alleged damages for the seven years now at issue (FY 2000 through FY 2006) will be approximately $350,000,000.00. This figure represents approximately 20% of New Mexico's operational expenditures for public education for FY 2006. Requiring New Mexico to pay these money damages would impose catastrophic consequences on the State's educational funding.

As previously discussed, New Mexico's commitment to a policy of equalizing public education funding predates both the equalization exception of 20 U.S.C. § 7709 and Congress's initial policy decision to provide Impact Aid. In sum, for over seventy years, New Mexico has maintained a statewide system for funding public education. Moreover, it has made a good-faith effort to equalize that funding for more than thirty years. Since 1976, New Mexico has followed the Secretary's criteria for certification of its equalization plan. Such adherence to the Secretary's calculation methods was not only reasonable, it was required. *See* 34 C.F.R. § 222.160, Appendix to Subpart K ("Except as otherwise provided in the regulations, these methods are the only methods that may be used in making these determinations."). Absent a finding that the Secretary acted without Congressional authority, the Supremacy Clause precludes the State from unilaterally ignoring federal regulations or agency interpretation of such regulations. *New York v. FCC*, 486 U.S. 57, 63 (1988) ("The phrase 'Laws of the United States' encompasses . . . federal regulations that are properly adopted in accordance with statutory authorization.") In light of this long-term regulatory regime, and the

State's compulsory reliance upon federal regulations, and the Secretary's certification criteria, it would be inequitable to hold New Mexico liable for any retroactive monetary damages sought by Petitioners. *Brown*, 349 U.S. at 300.

B. The Nature Of Congress's Spending Clause Authority Renders Prospective Relief Appropriate.

The Court has long recognized the special considerations which bear upon fashioning a remedy when interpretation of a Spending Clause statute is at issue. *See Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 29-30 (1981) ("[R]elief may well be limited to enjoining the Federal Government from providing funds to the [State]"); *Guardians Ass'n v. Civil Serv. Comm'n of the City of New York*, 463 U.S. 582, 595-97 (1983) (opinion of White, J.) ("'[M]ake whole' remedies are not ordinarily appropriate in private actions seeking relief from violations of statutes passed by Congress pursuant to its power under the Spending Clause to place conditions on the grant of federal funds."); *Rosado v. Wyman*, 397 U.S. 397, 420-21 (1970) (holding that petitioners were "entitled to declaratory relief and an appropriate injunction by the district court against the payment of *federal* monies according to the new schedule, should the State not develop a conforming plan within a reasonable period of time"). Significantly, the Court has recognized *Rosado* as a rejection of "the suggestion that the courts could require the State to pay the additional sums demanded by compliance with federal standards." *Pennhurst*, 451 U.S. at 29.

These special considerations stem from the nature of federal grants made under Congress's spending power. "[L]egislation enacted pursuant to the spending power is

much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Pennhurst*, 451 U.S. at 17. Crucial to the legitimacy of Congress's power under the Spending Clause is the State's voluntary and knowing acceptance of the terms of the contract. *Id.* The *Pennhurst* Court explained further:

> There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously. By insisting that Congress speak with a clear voice, we enable the States to exercise their choice knowingly, cognizant of the consequences of their participation.

Id. (citation omitted). As such, this Court has "regularly applied the contract-law analogy in cases defining the scope of conduct for which funding recipients may be held liable for money damages." *Barnes v. Gorman*, 536 U.S. 181, 184 (2002).

This case presents a particularly complex contractual arrangement between the local educational agencies ("LEA"), the state, and the federal government. In essence, there are two separate, but closely related and interdependent contracts. The first contractual arrangement is between the LEA and the federal government, with the LEA meeting certain conditions in exchange for federal funding. *See* 20 U.S.C. § 7703. If the LEA meets the criteria for the Impact Aid, the state may elect to enter into the second contractual arrangement, by fulfilling the conditions set forth under 20 U.S.C. § 7709. In exchange for creating a certifiable equalization plan, the federal

government allows the state to take credit for the funds sent to the LEA. In turn, the state has more funds available to distribute to all of the school districts.

It is the details of the terms of this second contractual relationship that are at issue in this case. Petitioners argue that the Secretary has invalidly certified New Mexico's equalization plan, and thus the Secretary's certification should be set aside. In doing so, Petitioners essentially seek to demonstrate that the State has not fulfilled the conditions placed upon it by the federal government and therefore should not be allowed to take the credit. They argue that "[i]f New Mexico wants to have the benefits of achieving equalization, it must meet the 25% disparity test under the rules set by Congress. It has not done so." *Pet. Br.* at 47. Absent from this argument, however, is any recognition of the essentially contractual nature of this legislation, and the Secretary's role in setting the terms and conditions of the State's contractual obligations. Even if the Court determines that the Secretary exceeded the authority delegated by Congress and erroneously certified New Mexico in a manner that Congress did not intend, New Mexico cannot be faulted for meeting the certification terms enforced by the Secretary.

Imposing different terms on New Mexico, retroactively, based upon the Court's new interpretation of § 7709 would amount to an improper, unilateral change in contract terms. Petitioners insist that the text of § 7709(b)(2)(B)(i) clearly expressed Congress's intent and gave the State adequate notice of a change. The Court should reject this argument. First, such a contention is untenable, given that Petitioners have now set forth three different methods of calculating the computation called for in § 7709(b)(2)(B)(i). More importantly, even if the State disagreed with the

Secretary's interpretation of § 7709(b)(2)(B)(i), it was not at liberty to ignore it. Petitioners correctly state that "New Mexico is free to equalize its funding or not as it chooses." *Pet. Br.* at 47. As demonstrated above, New Mexico's choice to equalize pre-dates Congress's Impact Aid legislation. New Mexico, however, was not free to choose the method which the Secretary used to certify its equalization plan. The State and Amici Districts should not now be penalized for New Mexico's adherence to the conditions as it reasonably understood them at the time it applied for and received certification. Any such remedy will inevitably have drastically adverse effects on the Amici Districts, which are in essence third-party beneficiaries of the certification process. *Cf. Barnes*, 536 U.S. at 189 (recognizing the rights of third-party beneficiaries to a federal grant).

C. Eleventh Amendment Immunity Precludes A Retroactive Restitution.

The *Pennhurst* Court also noted that "anything but prospective relief would pose serious questions under the Eleventh Amendment." *Pennhurst*, 451 U.S. at 29-30; *see also Hergenreter v. Hayden*, 295 F. Supp. 251, 256 (D. Kan. 1968) (a federal court "cannot constitutionally, under the Eleventh Amendment, decree affirmative relief against the State . . . or attorney fees for plaintiffs or for restitution of past school distribution funds which may have been illegally withheld by defendants."); *Shepheard v. Godwin*, 280 F. Supp. 869, 876 (E.D. Va. 1968) ("A decree [ordering restitution] would be an order to the State to take affirmative political action . . . prohibited by the Eleventh Amendment."). Significantly, the conditioned waiver of Eleventh Amendment immunity under 20 U.S.C. § 7709 is

limited to certain narrowly and clearly defined state violations. *See* 20 U.S.C. § 7709(e)(1)-(2). First, immunity is waived if the state considers Impact Aid payments before obtaining certification from the Secretary. *Id.* at § 7709(d)(2), (e); *see also id.* at § 7709(a), (b)(1). Second, in cases in which the state obtains certification based on projected data and provides assurances of repayment to the affected LEAs, immunity is waived if the final data do not demonstrate conformance with the disparity standard. *Id.* at § 7709(b)(3)(B).

A waiver of a state's Eleventh Amendment Immunity cannot be lightly implied. *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 682 (1999) ("[I]n the context of *federal* sovereign immunity . . . it is well established that waivers are not implied. We see no reason why the rule should be different with respect to state sovereign immunity."); *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 306 (1990) ("Sensitive to the values underlying the Eleventh Amendment, the Court has required that consent to suit in federal court be express"). Nothing in the statute indicates that Congress intended as one of its conditions on the federal grant that a state open itself to liability for any errors the Secretary might commit in determining equalization under 20 U.S.C. § 7709(b)(2)(B)(i). Nothing in the waiver clause references or otherwise mentions the computation section of the statute and nothing indicates that New Mexico knowingly and voluntarily waived its immunity under these circumstances. *College Savings Bank*, 527 U.S. at 682 ("The classic description of an effective waiver of a constitutional right is the intentional relinquishment or abandonment of a known right or privilege.") (quotation omitted).

If the Court invalidates Appendix K, Amici Districts respectfully request that it apply its decision to certification applications post-dating such a ruling. New Mexico's longstanding commitment to equalization and the complex and time-sensitive nature of the State's funding formula and processes require that New Mexico and the Amici Districts be afforded a reasonable opportunity to adjust to any changes to the interpretation of 20 U.S.C. § 7709. Equity and the Court's precedent dictate such a result.

CONCLUSION

The Amici Districts urge the Court to uphold certification of New Mexico's education program as equalized. Alternatively, any remedy granted to Petitioners should be prospective, only.

Respectfully submitted,

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APPENDIX A

AMICI DISTRICTS

	Public School Districts	2005-2006 Enrollment
1.	Albuquerque Public Schools	94,566
2.	Animas Public Schools	291
3.	Artesia Public Schools	3,503
4.	Aztec Municipal Schools	3,244
5.	Capitan Municipal Schools	588
6.	Carlsbad Municipal Schools	6,074
7.	Chama Valley Independent Schools	470
8.	Clayton Public Schools	536
9.	Cloudcroft Municipal Schools	469
10.	Clovis Municipal Schools	8,305
11.	Cobre Consolidated Schools	1,421
12.	Deming Public Schools	5,544
13.	Dexter Consolidated Schools	1,154
14.	Dora Consolidated Schools	231
15.	Elida Municipal Schools	141
16.	Estancia Municipal Schools	919
17.	Eunice Public Schools	575
18.	Farmington Municipal Schools	10,254
19.	Floyd Municipal Schools	253
20.	Fort Sumner Municipal Schools	330
21.	Gadsden Independent Schools	14,245
22.	Grady Municipal Schools	147
23.	Hagerman Municipal Schools	467
24.	Hatch Valley Public Schools	1,556
25.	Hobbs Municipal Schools	7,713
26.	Hondo Valley Public Schools	136
27.	House Municipal Schools	147
28.	Jal Public Schools	421
29.	Lake Arthur Municipal Schools	162
30.	Las Cruces Public Schools	23,911
31.	Logan Municipal Schools	233
32.	Lordsburg Municipal Schools	716

33.	Los Alamos Public Schools	3,628
34.	Loving Municipal Schools	563
35.	Lovington Municipal Schools	2,936
36.	Melrose Public Schools	248
37.	Moriarty Municipal Schools	4,062
38.	Pecos Independent Schools	767
39.	Portales Municipal Schools	2,893
40.	Quemado Independent Schools	214
41.	Reserve Independent Schools	187
42.	Rio Rancho Public Schools	13,611
43.	Roswell Independent Schools	9,342
44.	Roy Municipal Schools	70
45.	Ruidoso Municipal Schools	2,370
46.	San Jon Municipal Schools	162
47.	Santa Fe Public Schools	13,740
48.	Santa Rosa Consolidated Schools	682
49.	Silver Consolidated Schools	3,550
50.	Taos Municipal Schools	3,207
51.	Tatum Municipal Schools	286
52.	Texico Municipal Schools	526
53.	Truth or Consequences Municipal Schools	1,544
54.	Tularosa Municipal Schools	1,043
	Total	**254,353**

APPENDIX B

NEW MEXICO'S RANKING AMONG THE STATES
(Selected Categories)

CATEGORY	RANKING	NEW MEXICO	U.S. AVERAGE
Students Enrolled per Teacher in Public Elementary and Secondary Schools, Fall 2003	26	15.0	15.8
Average Salaries of Public School Teachers, 2004-05	40	$39,391	$47,808
Percent of Revenue for Public Elementary and Secondary Schools (2003-04)[2] from:			
Local Government	50	13.3%	43.5%
State Government	3	69.0%	48.0%
Federal Government	1	17.7%	8.6%
Per Capita Total General Expenditures of State Governments for all Functions, 2001-02	8	$4,975	$3,857
Current Expenditure per Student in Public Elementary and Secondary Schools, Fall (2004-05)[3] Enrollment	26	$8,236	$8,618

Public School Revenue per Student in Fall Enrollment, 2003-04	26	8,992	$9,407
Per Capital Personal Income, 2002	48	$24,228	$30,804

Source: *National Education Association Research's report, Rankings & Estimates:*

Rankings of the States 2004 and Estimates of School Statistics 2005, Fall 2005 Update

[1]This is an average salary for all teachers paid out of the Operational Subfund and from federal funds.

[2]Included here are "receipts" for all public school funds (Operational, Teacherage, Transportation, Food Services, Athletics, Non-Instructional Support, Special Grant Projects, Capital Projects, and Debt Service) and the appropriation for the State Department of Education. "Receipts" excludes non-revenue items such as sale of bonds and property, loans, proceeds from insurance adjustments, abatements, and deferred sick leave accumulation.

[3]The following are included as "current expenditures": Expenditures for administration by the State Board of Education and the State Department of Education, instructional support, student support, operations and maintenance, student transportation, and food services. Excluded are interest on school debt, capital outlay, summer school, and community services.

DATA COLLECTION AND INFORMATION SYSTEMS

Information and Technology Division
New Mexico Public Education Department
300 Don Gaspar Avenue, Santa Fe, New Mexico 87501-2786 - Telephone (505) 827-6526 Fax (505) 827-3986

PERCENT OF POPULATION AGES 4 TO 17 LIVING IN POVERTY, BY DISTRICT

U.S. CENSUS BUREAU

DISTRICT	POVERTY	POP.	PERCENT
ALAMOGORDO	2,333	10,225	22.82
ALBUQUERQUE	19,031	103,461	18.39
ANIMAS	71	284	25.00
ARTESIA	858	3,512	24.43
AZTEC	507	3,015	16.82
BELEN	1,224	5,575	28.87
BERNALILLO	1,444	4,737	30.48
BLOOMFIELD	731	3,678	19.87
CAPITAN	98	629	15.58
CARLSBAD	1,442	6,245	23.09
CARRIZOZO	72	243	29.63
CENTRAL CONS.	2,879	8,803	32.70
CHAMA	132	529	24.95
CIMARRON	89	540	16.48
CLAYTON	143	589	24.28
CLOUDCROFT	66	499	13.23
CLOVIS	2,398	8,711	27.53
COBRE CONS.	571	1,606	35.55
CORONA	24	88	27.27
CUBA	738	1,466	50.34
DEMING	2,040	5,328	38.29
DES MOINES	24	99	24.24
DEXTER	248	861	28.80
DORA	62	180	34.44
DULCE	244	760	32.11
ELIDA	21	74	28.38
ESPANOLA	1,593	6,987	22.80
ESTANCIA	252	887	28.41
EUNICE	102	581	17.56
FARMINGTON	2,277	11,638	19.57
FLOYD	38	110	34.55
FT. SUMNER	78	313	24.92
GADSDEN	5,277	12,451	42.38
GALLUP	6,296	16,965	37.11
GRADY	20	60	33.33
GRANTS-CIBOLA	1,532	5,466	28.03
HAGERMAN	198	493	40.16
HATCH	705	1,555	45.34
HOBBS	1,757	7,264	24.19
HONDO	67	207	32.37
HOUSE	12	41	29.27
JAL	109	422	25.83
JEMEZ MOUNTAIN	112	317	35.33
JEMEZ VALLEY	237	1,188	19.95
LAKE ARTHUR	37	172	21.51
LAS CRUCES	6,194	22,812	27.15
LAS VEGAS CITY	682	2,415	28.24
LOGAN	38	191	19.90
LORDSBURG	286	805	35.53
LOS ALAMOS	84	3,322	2.53
LOS LUNAS	1,985	9,003	22.05
LOVING	108	427	25.29
LOVINGTON	621	2,655	23.39
MAGDALENA	309	701	44.08
MAXWELL	22	81	27.16
MELROSE	58	251	23.11
MESA VISTA	99	466	21.24
MORA	221	725	30.48
MORIARTY	817	5,263	15.52
MOSQUERO	6	35	17.14
MOUNTAINAIR	150	363	41.32
PECOS	182	932	19.53
PENASCO	147	628	23.41
POJOAQUE	255	1,782	14.31
PORTALES	894	3,052	29.29
QUEMADO	76	218	34.86
QUESTA	150	699	21.46
RATON	326	1,324	24.62
RESERVE	79	264	29.92
RIO RANCHO	658	11,675	5.64
ROSWELL	3,040	10,352	29.37
ROY	12	66	18.18
RUIDOSO	503	2,105	23.90
SAN JON	39	101	38.61
SANTA FE	2,878	17,125	16.81
SANTA ROSA	181	670	27.01
SILVER CITY	894	3,422	26.13
SOCORRO	681	2,145	31.75
SPRINGER	89	431	20.65
TAOS	1,036	3,686	28.11
TATUM	74	297	24.92
TEXICO	78	419	18.62
TRUTH OR CONSQ	621	1,831	33.92
TUCUMCARI	410	1,234	33.23
TULAROSA	579	1,941	29.83
VAUGHN	28	99	28.28
WAGON MOUND	32	159	20.13
WEST LAS VEGAS	646	2,014	32.08
ZUNI	907	1,881	48.22
STATE	85,364	358,921	23.78

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TOTAL STUDENT ENROLLMENT BY DISTRICT * School Year 2005-2006

This is a list of the number of students enrolled in New Mexico public schools on the 40th day of the school year. It was compiled from data submitted by districts on the Accountability Data System (ADS), and is updated annually in January. A list of district size in descending order is printed on the back of this sheet.

DISTRICT	ENROLLMENT	DISTRICT	ENROLLMENT	DISTRICT	ENROLLMENT
ALAMOGORDO	6,489	FLOYD	253	MOUNTAINAIR	375
ALBUQUERQUE	94,566	FORT SUMNER	330	PECOS	767
ANIMAS	291	GADSDEN	14,245	PENASCO	619
ARTESIA	3,503	GALLUP	13,000	POJOAQUE	1,991
AZTEC	3,244	GRADY	147	PORTALES	2,893
BELEN	4,852	GRANTS-CIBOLA	3,566	QUEMADO	214
BERNALILLO	3,389	HAGERMAN	469	QUESTA	556
BLOOMFIELD	3,191	HATCH	1,556	RATON	1,442
CAPITAN	588	HOBBS	7,713	RESERVE	187
CARLSBAD	6,074	HONDO	136	RIO RANCHO	13,611
CARRIZOZO	196	HOUSE	147	ROSWELL	9,342
CENTRAL CONS.	6,950	JAL	421	ROY	70
CHAMA	470	JEMEZ MOUNTAIN	355	RUIDOSO	2,370
CIMARRON	567	JEMEZ VALLEY	483	SAN JON	162
CLAYTON	536	LAKE ARTHUR	162	SANTA FE	13,740
CLOUDCROFT	469	LAS CRUCES	23,911	SANTA ROSA	682
CLOVIS	8,305	LAS VEGAS CITY	2,109	SILVER CITY	3,350
COBRE CONS.	1,421	LOGAN	233	SOCORRO	2,013
CORONA	87	LORDSBURG	716	SPRINGER	211
CUBA	696	LOS ALAMOS	3,628	TAOS	3,207
DEMING	5,544	LOS LUNAS	8,680	TATUM	286
DES MOINES	143	LOVING	563	TEXICO	526
DEXTER	1,154	LOVINGTON	2,936	TRUTH OR CONSQ	1,544
DORA	231	MAGDALENA	444	TUCUMCARI	1,101
DULCE	681	MAXWELL	93	TULAROSA	1,043
ELIDA	141	MELROSE	248	VAUGHN	93
ESPANOLA	4,702	MESA VISTA	459	WAGON MOUND	165
ESTANCIA	919	MORA	622	WEST LAS VEGAS	2,001
EUNICE	575	MORIARTY	4,062	ZUNI	1,585
FARMINGTON	10,254	MOSQUERO	50	**STATE TOTAL**	**328,111**

ENROLLMENT FROM HIGH TO LOW
SCHOOL YEAR 2005-2006

DISTRICT	ENROLLMENT	DISTRICT	ENROLLMENT	DISTRICT	ENROLLMENT
ALBUQUERQUE	94,566	SOCORRO	2,013	MESA VISTA	459
LAS CRUCES	23,911	WEST LAS VEGAS	2,001	MAGDALENA	444
GADSDEN	14,245	POJOAQUE	1,991	JAL	421
SANTA FE	13,740	ZUNI	1,585	MOUNTAINAIR	375
RIO RANCHO	13,611	HATCH	1,556	JEMEZ MOUNTAIN	355
GALLUP	13,000	TRUTH OR CONSQ	1,544	FORT SUMNER	330
FARMINGTON	10,254	RATON	1,442	ANIMAS	291
ROSWELL	9,342	COBRE CONS.	1,421	TATUM	286
LOS LUNAS	8,680	DEXTER	1,154	FLOYD	253
CLOVIS	8,305	TUCUMCARI	1,101	MELROSE	248
HOBBS	7,713	TULAROSA	1,043	LOGAN	233
CENTRAL CONS.	6,950	ESTANCIA	919	DORA	231
ALAMOGORDO	6,489	PECOS	767	QUEMADO	214
CARLSBAD	6,074	LORDSBURG	716	SPRINGER	211
DEMING	5,544	CUBA	696	CARRIZOZO	196
BELEN	4,852	SANTA ROSA	682	RESERVE	187
ESPANOLA	4,702	DULCE	681	WAGON MOUND	165
MORIARTY	4,062	MORA	622	LAKE ARTHUR	162
LOS ALAMOS	3,628	PENASCO	619	SAN JON	162
GRANTS-CIBOLA	3,566	CAPITAN	588	GRADY	147
ARTESIA	3,503	EUNICE	575	HOUSE	147
BERNALILLO	3,389	CIMARRON	567	DES MOINES	143
SILVER CITY	3,350	LOVING	563	ELIDA	141
AZTEC	3,244	QUESTA	556	HONDO	136
TAOS	3,207	CLAYTON	536	MAXWELL	93
BLOOMFIELD	3,191	TEXICO	526	VAUGHN	93
LOVINGTON	2,936	JEMEZ VALLEY	483	CORONA	87
PORTALES	2,893	CHAMA	470	ROY	70
RUIDOSO	2,370	CLOUDCROFT	469	MOSQUERO	50
LAS VEGAS CITY	2,109	HAGERMAN	469	TOTAL	328,111

NMPED-DCRU#5

1/12/2006

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PERCENT OF STUDENT ENROLLMENT ETHNIC CATEGORY BY DISTRICT * School Year 2005-2006

his sheet lists the percentage of students in ethnic groups in each public school district in New Mexico. It was compiled from data submitted by districts on the ccountability Data System (ADS), and is updated annually in January.

DISTRICT	% Anglo	% Hispanic	% Nat. Am.	% Black	% Asian	TOTAL
ALAMOGORDO	55.2	34.3	1.4	7.0	2.0	6,489
ALBUQUERQUE	34.1	54.5	5.1	3.9	2.4	94,566
ANIMAS	55.7	44.0	0.0	0.0	0.3	291
ARTESIA	45.0	53.3	0.3	1.2	0.2	3,503
AZTEC	63.9	21.9	13.1	0.5	0.6	3,244
BELEN	27.0	68.7	1.8	2.1	0.5	4,852
BERNALILLO	9.5	48.9	41.1	0.4	0.2	3,389
BLOOMFIELD	34.2	31.6	33.4	0.4	0.4	3,191
CAPITAN	71.3	26.0	1.2	1.2	0.3	588
CARLSBAD	48.1	48.7	0.8	1.8	0.6	6,074
CARRIZOZO	37.8	61.7	0.0	0.5	0.0	196
CENTRAL	8.1	2.3	89.2	0.3	0.1	6,950
CHAMA	13.2	84.3	1.9	0.4	0.2	470
CIMARRON	66.1	32.6	0.4	0.2	0.7	567
CLAYTON	49.4	48.9	0.9	0.6	0.2	536
CLOUDCROFT	88.5	9.8	1.1	0.4	0.2	469
CLOVIS	41.5	46.4	0.8	9.6	1.6	8,305
COBRE CONS.	11.5	86.1	1.3	0.8	0.3	1,421
CORONA	58.6	41.4	0.0	0.0	0.0	87
CUBA	6.6	31.5	61.6	0.1	0.1	696
DEMING	18.8	79.6	0.4	0.9	0.4	5,544
DES MOINES	60.1	38.5	0.0	0.7	0.7	143
DEXTER	27.1	72.7	0.0	0.2	0.0	1,154
DORA	76.2	23.4	0.0	0.4	0.0	231
DULCE	1.0	6.0	93.0	0.0	0.0	681
ELIDA	73.1	23.4	1.4	2.1	0.0	141
ESPANOLA	2.6	90.9	6.0	0.5	0.1	4,702
ESTANCIA	44.4	51.0	2.6	1.6	0.3	919
EUNICE	49.7	48.2	0.7	1.4	0.0	575
FARMINGTON	45.1	23.0	30.1	1.1	0.7	10,254
FLOYD	49.0	46.6	1.6	2.8	0.0	253
FT. SUMNER	56.4	42.4	0.0	1.2	0.0	330
GADSDEN	4.1	95.4	0.1	0.3	0.2	14,245
GALLUP	6.4	11.0	81.7	0.4	0.6	13,000
GRADY	87.8	10.9	0.0	1.4	0.0	147
GRANTS-CIBOL	19.0	40.3	39.2	1.0	0.5	3,566
HAGERMAN	35.2	64.4	0.2	0.0	0.2	469
HATCH	10.5	89.5	0.0	0.0	0.0	1,556
HOBBS	37.7	55.2	0.2	6.4	0.6	7,713
HONDO	8.1	89.7	0.7	1.5	0.0	136
HOUSE	64.0	34.0	0.0	1.4	0.7	147
JAL	41.3	58.4	0.0	0.2	0.0	421
JEMEZ MOUNTA	11.0	64.5	24.5	0.0	0.0	355
JEMEZ VALLEY	10.1	25.9	63.8	0.0	0.2	483
LAKE ARTHUR	27.2	72.8	0.0	0.0	0.0	162

DISTRICT	% Anglo	% Hispanic	% Nat. Am.	% Black	% Asian	TOTAL
LAS CRUCES	25.6	70.2	0.8	2.4	1.0	23,911
LAS VEGAS CITY	10.1	88.0	0.5	0.8	0.7	2,109
LOGAN	73.8	25.3	0.9	0.0	0.0	233
LORDSBURG	12.4	86.6	0.0	0.3	0.7	716
LOS ALAMOS	75.4	17.9	0.6	0.5	5.7	3,628
LOS LUNAS	28.2	62.6	7.5	1.3	0.5	8,680
LOVING	22.0	78.0	0.0	0.0	0.0	563
LOVINGTON	31.1	65.1	0.4	3.1	0.3	2,936
MAGDALENA	23.7	30.4	45.1	0.2	0.7	444
MAXWELL	55.9	43.0	0.0	1.1	0.0	93
MELROSE	85.9	13.7	0.4	0.0	0.0	248
MESA VISTA	10.0	87.2	2.0	0.7	0.2	459
MORA	4.8	95.0	0.0	0.0	0.2	622
MORIARTY	65.3	30.9	1.7	1.5	0.6	4,062
MOSQUERO	44.0	56.0	0.0	0.0	0.0	50
MOUNTAINAIR	26.7	68.3	1.6	2.9	0.5	375
PECOS	9.3	89.1	0.7	0.9	0.1	767
PENASCO	1.9	92.6	5.3	0.0	0.2	619
POJOAQUE	7.6	72.4	19.2	0.6	0.2	1,997
PORTALES	44.6	52.4	0.8	1.8	0.3	2,893
QUEMADO	69.2	16.4	13.6	0.9	0.0	214
QUESTA	18.9	79.0	0.7	1.3	0.2	550
RATON	36.7	61.9	0.5	0.4	0.6	1,443
RESERVE	55.1	38.5	6.4	0.0	0.0	187
RIO RANCHO	50.9	38.8	4.3	4.1	2.0	13,611
ROSWELL	34.2	62.2	0.4	2.6	0.7	9,343
ROY	67.1	32.9	0.0	0.0	0.0	73
RUIDOSO	42.6	38.7	17.1	0.9	0.7	2,377
SAN JON	65.4	32.1	1.9	0.0	0.6	160
SANTA FE	22.0	73.2	3.0	0.7	1.2	13,747
SANTA ROSA	4.6	94.1	0.6	0.2	0.6	685
SILVER CITY	43.8	53.3	0.9	1.3	0.8	3,355
SOCORRO	25.0	67.1	4.1	1.6	2.1	2,010
SPRINGER	35.1	64.0	0.0	1.0	0.0	211
TAOS	20.6	70.0	7.8	0.4	1.1	3,200
TATUM	44.4	54.9	0.0	0.4	0.4	281
TEXICO	56.8	40.1	0.0	3.0	0.0	527
TRUTH OR CONS	51.6	46.2	0.8	1.0	0.4	1,541
TUCUMCARI	33.2	62.6	0.4	2.2	1.7	1,101
TULAROSA	30.4	47.5	19.9	1.8	0.4	1,041
VAUGHN	4.3	93.6	2.2	0.0	0.0	93
WAGON MOUND	44.9	52.7	0.6	1.8	0.0	169
WEST LAS VEGA	5.7	93.1	0.3	0.8	0.2	2,009
ZUNI	0.6	0.1	99.2	0.1	0.0	1,587
STATE	31.1	54.0	11.1	2.5	1.3	328,117

APPENDIX F

LFC Requestor: Ron Segura

NEW MEXICO STATE DEPARTMENT OF EDUCATION 2003 AGENCY BILL ANALYSIS

Section I: General Information

		Date Prepared			Date Prepared
X	Original	1/24/03	__	Amendment	
__	Correction		__	Substitute	

BILL IDENTIFICATION:
House Bill # 115 Sponsor: Rep. W. Ken Martinez

Short Title: School Funding Formula

Reviewing Agency: New Mexico State Department of Education

Person Writing Analysis: Carla Acosta Phone 476-0198

E-Mail Address: cacosta@sde.state.nm.us

Section II: Fiscal Impact (Please indicate amounts in thousands, e.g., $100,000 will be $100.0)

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring	Fund
FY2003	FY2004	FY2003	FY2004	or Non-Rec	Affected
$	$	$	$		
$	$	$	$		
$	$	$	$		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue FY2003	Estimated Revenue FY2004	Subsequent Years Impact		Recurring or Non-Rec	Fund Affected
$	$	$	$		
$	$	$	$		
$	$	$	$		

(Parenthesis ( ) Indicate Revenue Decreases)

Section III: Relationship To Other Legislation or General Appropriation Act (Please underline)

Duplicates/Conflicts with/Companion to/Relates to None known

Section IV: Narrative

1. BILL SUMMARY (Two Parts)

a) Synopsis.

House Bill 115 would amend the Public School Finance Act [§22-8-25, NMSA 1978] to:

(1) Change the percent of federal Impact Aid receipts the state takes into consideration in calculating the State Equalization Guarantee (SEG) from 75% to 60% from July 1, 2003, to June 30, 2004;

(2) Change the percent of federal Impact Aid receipts the state takes into consideration in calculating the SEG from 60% to 45% from July 1, 2004, to June 30, 2005;

(3) Change the percent of federal Impact Aid receipts the state takes into consideration in calculating the SEG from 45% to 30% from July 1, 2005, to June 30, 2006;

(4) Change the percent of federal Impact Aid receipts the state takes into consideration in calculating the SEG from 30% to 15% from July 1, 2006, to June 30, 2007;

(5) Change the percent of federal Impact Aid receipts the state takes into consideration in calculating the SEG from 15% to 0% beginning on July 1, 2007 and in subsequent years.

(b) Significant Issues.

Based on the reduction of impact aid credits to 45% for Fiscal Year 2005, HB 115 would affect the state's ability to qualify as an equalized state for the purpose of taking credit for Impact Aid funds in the calculation of the SEG because the state would no longer be able to meet the disparity test set forth in federal law; therefore, no impact aid credit could be taken.

Because of the statutory provisions of New Mexico's public school funding formula, New Mexico has, in prior years, qualified under federal Impact Aid requirements (20 USCS § 7709(b)(1)) as an equalized state and has been allowed to consider eligible Impact Aid receipts in determining the amount of state aid to public school districts.

Currently, the state takes 75% credit of all local and federal revenues as required in the Public School Finance Act (§ 22-8-25 NMSA 1978). The state takes credit for only the operational portion of the Impact Aid funds, which translates to 57.8% of total Impact Aid payments. Not considered in the calculation of state aid are 42.2% of total Impact Aid payments (see Chart 1).

If HB 115 were enacted, New Mexico would no longer qualify under federal law to take credit for eligible Impact Aid revenues because the state would no longer meet the disparity test required by federal law. If the 45% Impact Aid credit had been in effect when the state submitted its disparity calculation for 2002-2003, the state would not

have been certified to take credit for Impact Aid receipts (see Table 1).

2. PERFORMANCE IMPLICATIONS (How bill will affect performance of relevant agency programs)

Without additional state funding, the proposed amendments in HB 115 would reduce the unit value, causing a majority of the school districts to experience a loss of operational revenue. The affected school districts would have fewer resources to meet their performance measure targets.

3. FISCAL IMPACTS (Can SDE or public schools absorb increase/decrease?)

Passage of HB 115 would require the 2004 Legislature to appropriate a projected additional $48,845.0 of general fund revenue to the SEG to make up for the loss in Impact Aid credits and thereby maintain current unit value. Otherwise, the unit value for all school districts would have to be reduced proportionally to make up the loss to the SEG. (See Table 2, which provides a breakdown of the projected loss to individual districts based on 2001-2002 actual distributions.)

4. ADMINISTRATIVE IMPLICATIONS (Short or long-term impact on SDE, public schools or changes to FTE)

None.

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP (Cite laws or bill #s)

None known.

6. TECHNICAL ISSUES (Corrections)

Sections 22-8-25B, C(1) and C(2) should be amended to reflect the actual procedure of budgeting the corresponding additional state revenues that are received by districts as a result of the reduction in the credits from 95% to the current 75% that is directed toward capital outlay.

7. SUBSTANTIVE ISSUES (Conflicts with existing policy or programs)

Section 8009 of the Act (20 U.S.C. §7709(a)) sets forth the general prohibition against a state's considering impact aid payments in determining eligibility for state aid or the amount of such state aid; subsection (b) sets forth the mechanism for qualifying as an equalized state. A state so qualifying may take basic impact aid payments into consideration in determining the relative resources available to local educational agencies in the state and the financial resources of such agencies. Eligible impact receipts may be taken into consideration (equalized) only in the same proportion as local tax receipts. The legislative history clearly supports the underlying intent of the provision allowing equalized states to take credit for impact aid receipts so as to do away with the impediment to state actions designed to "remove the often close relationship between values of property and quality of education in a school district." Inasmuch as no school district in New Mexico relies upon its property tax base to fund its operational expenses, HB 115 would essentially allow a district receiving impact aid revenue to receive the benefit of the SEG distribution and the benefit of payments designed to compensate for the federal presence.

If New Mexico were unable to take credit for Impact Aid receipts, the SEG would be reduced by an estimated $48,845.0 (see Chart 1 and Table 3) for the school year

2004-2005. Impact Aid districts would realize an increase of over $80,000.0 in operational revenues to use at their discretion. This change could have a significant deleterious effect on the SEG Formula as it is now constituted.

In addition, the corresponding additional state revenues that are received by impact aid districts as a result of the reduction in the credits from 95% to the current 75% and directed toward capital outlay would be nullified. As a result of New Mexico's failure to qualify as an equalized state, each Impact Aid recipient district would be able, according to federal law, to expend its Impact Aid for any legally permissible purpose.

8. ALTERNATIVES

Retain the current statute as amended and enacted.

9. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The state will continue to take 75% credit of all local and federal revenues as required in the Public School Finance Act (§ 22-8-25 NMSA 1978) in calculation of the SEG, and districts will continue to budget 20% of the additional state revenue received as a result of the reduction in the credits for capital outlay expenditures.

10. AMENDMENTS

See paragraph 6, above.

APPENDIX G

LFC Requestor: Ron Segura

NEW MEXICO STATE DEPARTMENT OF EDUCATION 2003 AGENCY BILL ANALYSIS

Section I: General Information

		Date Prepared			Date Prepared
X	Original	2/11/03	__	Amendment	
__	Correction		__	Substitute	

BILL IDENTIFICATION:
House Bill # 637 Sponsor: Rep. Terry T. Marquardt

Short Title: Allow School Districts to Keep Federal Money

Reviewing Agency: New Mexico State Department of Education

Person Writing Analysis: Carla Acosta & Arlene Strumor Phone 476-0198

E-Mail Address: cacosta@sde.state.nm.us and astrumor@sde.state.us

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Section II: Fiscal Impact (Please indicate amounts in thousands, e.g., $100,000 will be $100.0)

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring	Fund
FY2003	FY2004	FY2003	FY2004	or Non-Rec	Affected
$	$0.0	$	$62,000.0	Recurring	GF
$	$	$	$		
$	$	$	$		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue FY2003	Estimated Revenue FY2004	Subsequent Years Impact		Recurring or Non-Rec	Fund Affected
$	$	$	$		
$	$	$	$		
$	$	$	$		

(Parenthesis ( ) Indicate Revenue Decreases)

Section III: Relationship To Other Legislation or General Appropriation Act (Please underline)

Duplicates/Conflicts with/Companion to/
Relates to HB115 and HB483

Section IV: Narrative

1. BILL SUMMARY (Two Parts)

a) Synopsis.

HB 637 would amend the Public School Finance Act [§22-8-25, NMSA 1978] to allow school districts to keep 100 percent of their Federal Forest Reserve and Impact Aid revenue.

b) Significant Issues.

HB 637, if enacted, will remove the state's ability to take credit for federal revenue (currently defined as 75 percent of a school district's share of Forest Reserve funds and eligible Impact Aid receipts) in determining state aid. Under the provisions of the bill, the state will continue to take credit for 75 percent of local revenue, which is defined as the .5 mill levy.

HB 637 will, in the instance of some districts receiving Federal Forest Reserve and/or Impact Aid funds, increase the funds available for operational expenditures within those school districts as a result of the removal of Federal Forest Reserve and Impact Aid credits. The effect of removing the credits for federal revenue for SEG purposes will be to increase the revenues available for operational expenditures in some but not all of those districts receiving Impact Aid and Forest Reserve revenues. Unless the Legislature appropriates an additional amount equal to the federal revenues for which credit is taken, most school districts will experience a corresponding decrease in SEG for operational expenditures (see Table 1).

If HB 637 is enacted, significant disequalization within the state will occur with regard to funds available to school districts for operational expenditures. Districts receiving Impact Aid payments will derive the benefit from their impacted property tax base by virtue of the payments in lieu of taxes. Under current law, the .5 mill levy limits the ability to other school districts in the state to access their property tax base for operational purposes; HB 637 requires the state to continue to take credit for 75 percent of those revenues.

2. PERFORMANCE IMPLICATIONS (How bill will affect performance of relevant agency programs)

- Without additional state funding, the proposed amendments in HB 637 would reduce the unit value, causing most of the school districts to experience a loss of operational revenue. The affected school districts would have fewer resources to meet their performance measure targets.

3. FISCAL IMPACTS (Can SDE or public schools absorb increase/decrease?)

Passage of HB 637 would require the 2004 Legislature to appropriate approximately $62,000.0 in additional General Fund revenue to the SEG to compensate for the loss in Federal Forest Reserve and Impact Aid credits in order to maintain current unit value. Otherwise, the unit value for all school districts would have to be reduced proportionally to make up the loss to the SEG.

4. ADMINISTRATIVE IMPLICATIONS (Short or long-term impact on SDE, public schools or changes to FTE)

None apparent.

5. CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP (Cite laws or bill #s)

HB 637 relates to HB 115 and HB 483. The Impact Aid portion of HB115 would reduce over a period of years the percent of federal Impact Aid receipts the state could take into consideration in calculating the SEG. HB483 caps the amount of federal Impact Aid receipts that could be used by the state in calculating the SEG.

6. TECHNICAL ISSUES (Corrections)

None.

7. OTHER SUBSTANTIVE ISSUES (Conflicts with existing policy or programs)

- If New Mexico no longer takes credit for Federal Forest Reserve and Impact Aid receipts, the SEG will be reduced for the school year 2003-2004. Federal Forest Reserve and Impact Aid districts will realize approximately $66,000.0 to use at their discretion (100 percent of Federal Forest Reserve and eligible Impact Aid revenue). This change could have a significant deleterious effect

on the State Equalization Funding Formula as it is now constituted and may result in a challenge to the public school finance structure as not meeting the requirement set forth in Article XII, Section 1, of the Constitution of New Mexico for a "uniform system of free public schools."

- In the absence of additional state revenues to support the unit value, districts, other than those impacted districts receiving significant impact aid revenues, will experience decreases in revenues available for operational expenditures. In addition, a number of districts receiving impact aid revenues for which credit is no longer being taken will nevertheless experience overall decreases in revenues available for operational expenditures. Based on 2001-2002 data of the 31 districts currently receiving impact aid payments, 18 of the districts would experience an overall decrease in revenues available for operational expenditures. See Table 1 (attached).

- As a result of New Mexico's failure to qualify as an equalized state, each Impact Aid recipient district would be able, according to federal law, to expend its Federal Forest Reserve and/or Impact Aid for any legally permissible purpose. Table 1 illustrates the net effect for each district's operating subfund.

- Revenues for capital outlay needs will also be affected since the requirement that revenues equal to 20% of Federal Forest Reserve and/or Impact Aid funds be designated for capital outlay would not be applicable. Thus, impacted districts must identify another source of revenue for local match requirements if HB455 is enacted.

8. ALTERNATIVES

Retain the current statute as amended and enacted.

9. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The state will continue to take 75% credit of all local and federal revenues as required in the Public School Finance Act (§ 22-8-25 NMSA 1978) in calculation of the SEC, and districts will continue to budget 20% of those revenues for capital outlay expenditures.

10. AMENDMENTS

None.